



PATENT
New Attorney Docket No. 544422000210
Old Attorney Docket No. 38599.0015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: James D. Thacker) Group Art Unit: 1645
)
Appl. No.: 10/020,923)
) Examiner: Khatol S. Shahnan Shah
Filing Date: December 19, 2001)

Title: METHODS FOR THE RAPID DETECTION OF ACTIVELY RESPIRING
MICROORGANISM

**REQUEST FOR FOUR MONTH EXTENSION OF TIME
AND RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

MAR 01 2004

Sir:

REQUEST FOR FOUR MONTH EXTENSION OF TIME

Applicant respectfully requests a four-month extension of time to respond to the Office Action, mail dated September 23, 2003, (Paper No. 7), to extend the period of time for filing this response up to and including February 23, 2004. **Please charge the requisite four-month, small entity extension fee of \$740 to Deposit Account No. 03-1952.**

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a.) Introductory Comments:

RESPONSE TO RESTRICTION REQUIREMENT

In response to the Office Action, mail dated September 23, 2003 (Paper No. 7), applicant respectfully makes the following provisional election and requests reconsideration of the Restriction in view of applicant's remarks below.

Applicant provisionally elects Group II, claims 6-19, and the species of claim 11, with traverse.

d.) Remarks

In the Office Action, restriction is deemed required, under 35 U.S.C. §121, to one of the following groups of claims:

Group I: Claims 1, 3, 5, 23 and 24, drawn to a method of amplifying the presence of microorganisms and a method of quantitating microorganisms in a sample (class 435, subclass 34);

Group II: Claims 6-19, drawn to a method for identifying or detecting microorganisms using antibodies (class 435, subclass 7.7); and

Group III: Claim 22, drawn to a method of diagnosing disease (class 435, subclass 7.32).

With regard to Group II, there is an additional species restriction and applicant is requested to elect one of claims 6, 7, 11 or 12. Currently, claims 1, 23 and 24 are considered generic and all pending claims read on the elected species.

As recited under M.P.E.P. 803, restriction is appropriate only when the groups can be shown to be distinct and there would be a "**serious burden**" placed on the Examiner to examine more than one group of claims. No such serious burden has been established and applicant

respectfully requests that this restriction be withdrawn.

In the instant application, all of the claims are directed to methods involving the identification or detection of microorganisms. Further, all claims even fall into the very same class, namely 435. As such, a search of all claims would amount to a search of the same subject area and, thus, it should not be considered a serious burden on the examiner to examine all of the claims together. It is respectfully requested that this requirement be withdrawn. Applicant respectfully provides the following additional remarks.

First, and as stated above, there are two basic criteria for applying a restriction requirement. The invention must fall into one or more of the standards set forth in the Manual of Patent Examining Procedure ("MPEP"), and there must be a serious burden placed on the examiner to examine all claims together. The comments in Paper No. 7 with respect to the restriction relate only to the first criteria, application of the rules of the MPEP to this case. No comments are made with respect to the second criteria, why it would be a serious search burden. The burden to show the appropriateness of this restriction rests with the U.S. Patent and Trademark Office ("PTO"). As that burden has not been met, applicant respectfully requests that this restriction requirement be withdrawn.

Second, in reviewing the classification structure imposed, it appears that the groups fall into the very same class, namely 435. Thus, examination of this one class would cover all of the claims. In view of the search structure alone, it is clear that examination of all claim groups would not impose a serious examination burden.

As stated above, a restriction requirement is imposed "only" when it would be a serious burden on the examiner to examine all of the claims at once. As a serious burden is not imposed by an examination of all claims, withdrawal of the restriction and examination of all claim groups is respectfully requested.

Conclusion

The application is in condition for examination and the prompt issuance of an Office Action is respectfully requested. If there are any additional fees due with the filing of this Response, including any additional fees for a further extension of time, not herein accounted for, applicant respectfully requests that extension and also requests that any and all fees due be charged to Deposit Account No. 03-1952.

Date: February 23, 2004

Respectfully submitted,
Morrison & Foerster LLP

By _____

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